

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)
James A. Dungy against)
DTE Electric Company and DTE)
Gas Company.)

Case No. U-18173

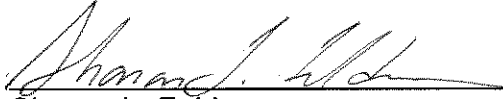
NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on February 8, 2017.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before March 7, 2017, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before March 24, 2017.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

A handwritten signature in dark ink, appearing to read "Sharon L. Feldman", is written over a horizontal line.

Sharon L. Feldman
Administrative Law Judge

February 8, 2017
Lansing, Michigan

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

James A. Dungy filed a complaint on August 25, 2016 against DTE Electric Company and DTE Gas Company (collectively "DTE").¹ Mr. Dungy's complaint alleged that DTE wrongly refused to place gas and electric service in his name, when he requested service in his name at his father's house after his father passed away, and subsequently wrongly demanded that he pay his deceased father's utility bills in violation of R 460.120.

On September 15, 2016, the Commission's Regulatory Affairs Division determined that the complaint stated a prima facie claim, and the complaint was therefore scheduled for an evidentiary hearing. DTE filed an answer to the complaint on October 26, 2016. DTE's answer clarifies that DTE Electric and DTE

¹ DTE Electric and DTE Gas are clearly the intended respondents, as noted below, and the caption identifying "DTE Energy Company" as the respondent has been correspondingly changed.

Gas are the respondents, rather than DTE Energy Company, the parent corporation.² DTE's answer also denies that the utilities violated any Commission rule, and contends that the complainant is responsible to pay for the utility services as billed by DTE.

As described below in section I, evidentiary hearings were held on November 28 and December 14, 2016. This Proposal for Decision (PFD) addresses the legal and factual disputes resulting from that hearing.

II.

EVIDENTIARY RECORD

The evidentiary record is contained in 72 transcript pages in two volumes and 3 exhibits.

Mr. Dungy testified on his own behalf.³ He presented his complaint as Exhibit C-1, and several utility bills as his Exhibit C-2. Mr. Dungy testified regarding his communications with DTE beginning in June of 2015. He testified that when he first contacted DTE to obtain utility service in his name, DTE refused to grant his request. He testified that he was told on two occasions that he would need to pay his father's bill before service would be put in his name.⁴ He also testified that

² No party disputed this, and this PFD concludes that the caption of this case should be changed accordingly.

³ Mr. Dungy's testimony is transcribed at Tr 7-18, 61-64. Mr. Dungy was allowed to participate by phone.

⁴ See Tr 9, 11.

he was told to send a copy of his father's death certificate, which he faxed to DTE, and was then told he would need to "go through probate."⁵

Mr. Dungy's complaint is Exhibit C-1, and he testified that the statements in his complaint are true.⁶ Mr. Dungy's complaint states that he sought to have service put in his name after DTE shut off utility services to the house in May of 2016. It states, as he testified, that he was told DTE would not put service in his name unless he paid his father's bill. It states that on July 8, 2016, he contacted the MPSC and spoke with Ryan Cook, who informed him of the provisions of R 460.137, and referred his complaint to a supervisor at DTE. Mr. Dungy's complaint states that he spoke with "Pasco Mancevic" [subsequently correctly identified as "Pashko Memcevic"] at DTE on several occasions. He testified that DTE turned on service in his name and billed him for utility services provided to the residence after his father's death, although he did not agree to that. The complaint describes Mr. Dungy's conversation with Mr. Memcevic as follows:

[U]pon talking to Mr. [Memcevic] we would not agree on the terms [and] conditions about restoring my service. I was told that he never investigated my complaint, and that I would have to pay off my father's existing bill, even though I informed Mr. [Memcevic] that I was not living in the residence, and that I was caring for my elderly parents, he also informed me that my father's bill would be added on to my new bill, the number we could not agree on was [\$1,717]. He even insisted that during our conversation that I could, or might have been stealing power and that I never had any intention to pay the existing bill.⁷

⁵ See Tr 10.

⁶ See Tr 8.

⁷ See Exhibit C-1, page 3.

The complaint states that in that conversation Mr. Memcevic informed Mr. Dungy that he would also have to pay a deposit, due to a prior unpaid bill in his name, and indicates that Mr. Dungy objects to this deposit. The complaint states that in addition to the deposit, he was told at the end of the conversation that he would eventually have to pay his father's bill from the date of his death forward.⁸ The complaint states that Mr. Dungy told Mr. Memcevic he did not want service because they could not agree on the number, but then came home and found that the service had been restored. It also states that on July 22, 2016, he received a bill with a deposit amount of \$199.00 "due immediately."

Mr. Dungy's Exhibit C-2 contains bills he received at the house in his father's name, James W. Dungy. These bills are from the months of March through August 2016. He provided the bills to show they were in his father's name. He objected to paying any of the balances on these bills.⁹

During cross-examination by DTE, Mr. Dungy initially indicated that he moved into his parents' house in April of 2015 in order to help take care of them, but then testified that he was "kicked out of the house" and was staying with various friends until his father died, although he used his parents' house as a mailing address and was at the house regularly to help care for his parents. He testified that following his father's funeral, he did reside at the house.¹⁰ He also testified that he requested that service be placed in his name "after his father's passing".¹¹

⁸ See Exhibit C-1, page 4.

⁹ See Tr 12.

¹⁰ See Tr 14-16.

¹¹ See Tr 15.

DTE called two witnesses, Robin Jennings and Pashko Memcevic, and presented company records regarding Mr. Dungy's account and his father's account in Exhibit R-1.

Ms. Jennings is an Executive Customer Consultant for DTE.¹² She serves as custodian of company records, and presented the records relating to utility service to the house, including records relating to Mr. Dungy's account and his father's account. Ms. Jennings testified that DTE's records reflect that Mr. Dungy is the current account holder, with service as of July 19, 2016, backdated to November 29, 2015, "per his request."¹³ She testified that James W. Dungy, Mr. Dungy's father, was the prior account holder. She testified that DTE did not know that he had died, and on April 22, 2016, DTE disconnected the electric service for nonpayment of the bills.¹⁴ She also testified that DTE attempted to turn off the gas service, as of May 2, 2016, but its employee was not able to get into the house.¹⁵ She testified that this order was subsequently canceled due to the MPSC complaint.¹⁶ She testified that the electric service was also subsequently turned back on, when service was put in Mr. Dungy's name and he was billed for service from November 29, 2015 forward.¹⁷

Ms. Jennings testified that the June 20, 2015 note in DTE's account records indicating that Mr. Dungy was directed to contact "probate" refers to DTE's probate department.¹⁸ She also testified that DTE records reflect that Mr. Dungy was

¹² Ms. Jennings's testimony is transcribed at Tr 27-45.

¹³ See Tr 30.

¹⁴ See Tr 32.

¹⁵ See Tr 34.

¹⁶ See Tr 34.

¹⁷ See Tr 33-34.

¹⁸ See Tr 36.

advised that he would need to pay for service since the date of his father's death before service would be turned on in his name.¹⁹ She testified that page 42 of Exhibit R-1 reflects Mr. Dungy's initial complaint to the MPSC on July 8, 2016, including a record of the information provided by the staff member referring the complaint to DTE: "customer wants to transfer the account into his name and set up payment arrangement."²⁰ Ms. Jennings testified that the initial bill to Mr. Dungy is contained in pages 46-50 of Exhibit R-1.²¹ Ms. Jennings reviewed this bill, and testified that Mr. Dungy was only billed for service after November 29, 2015, as well as a \$199 deposit.

Ms. Jennings also presented the billing history for Mr. James W. Dungy's account. That billing history shows that after the transfer of the charges for service following his death, an outstanding balance of \$2,117.10 remained on Mr. James W. Dungy's account.²²

She also testified that several representatives of the company have been working with Mr. Dungy to help determine whether he is eligible for low-income assistance, and to work out a payment plan.²³

Mr. Memcevic is an Executive Customer Account Consultant for DTE.²⁴ He testified that he spoke with Mr. Dungy following Mr. Dungy's initial complaint to the MPSC. He testified that the complaint was referred to him on July 8, he attempted to reach Mr. Dungy beginning July 11, and believed he resolved Mr. Dungy's

¹⁹ See Tr 36.

²⁰ See Tr 38.

²¹ See Tr 38.

²² See Tr 37.

²³ See Tr 40-41.

²⁴ Mr. Memcevic's testimony is transcribed at Tr 46-59.

complaint in a conversation on July 19, 2016. He testified that pages 42 and 43 of Exhibit R-1 reflect the information he was provided when the complaint was referred. He testified that the record contains a summary of what Mr. Dungy stated in his call to the MPSC, as reported by the staff member Ryan Cook, and indicates that Mr. Dungy wanted to transfer the account into his name and set up payment arrangements, and that Mr. Dungy is a low-income customer.²⁵

Mr. Memcevic testified that in his July 19, 2016 conversation with Mr. Dungy, he told Mr. Dungy that his father's account was updated to reflect his death on November 19, 2015, and billing stopped from that date forward. He testified that he told Mr. Dungy that Mr. Dungy would be billed for service from that date forward. He testified that he also told Mr. Dungy that he would be billed a deposit of \$199 because of the unpaid balance from his prior address, which DTE could no longer seek to recoup. He also testified that he told Mr. Dungy that once he received the bill, he could call Mr. Memcevic and he would work with him to establish a payment plan. Mr. Memcevic testified that Mr. Dungy did not contest being billed for charges from the date of his father's death forward, and he considered the complaint resolved on July 19, 2016. While Mr. Dungy took issue with elements of Mr. Memcevic's testimony in cross-examination, Mr. Memcevic denied that Mr. Dungy had told him to turn on service, and denied that he had been rude to Mr. Dungy. He did acknowledge receiving a call back from Mr. Dungy on July 12, telling Mr. Dungy that he had other callers ahead of him. Mr. Memcevic

²⁵ See Tr 48-50.

also testified that he told Mr. Dungy that Mr. Memcevic had a 10-day window within which to resolve his complaint.²⁶

III.

DISCUSSION

Based on the evidentiary record and the arguments of the parties, the following issues are addressed in this discussion section. First, the principal dispute between the parties is whether DTE wrongly billed Mr. Dungy for service provided to his residence after the date of his father's death. Second, Mr. Dungy appears to dispute DTE's assessment of a deposit.

Beginning with the principal dispute, Mr. Dungy cites Rules 20 and 37 of the Commission's rules entitled "Consumers Standards and Billing Practices for Electric and Gas Residential Service," R 460.102 et seq. Rule 20 (2), R 460.120(2) states:

A utility shall not attempt to recover from any customer any outstanding bills or other charges due upon the account of any other person, unless that customer has entered into a lawful guarantee under R 460.112, or another lawful agreement to pay those bills and charges.

Rule 37, R 460.137, lists reasons the utility may shut off service:

Subject to the requirements of these rules, a utility may shut off or terminate service to a residential customer for any of the following reasons:

- (a) The customer has not paid a delinquent account that accrued within the last 6 years.
- (b) The customer has failed to provide a deposit or guarantee permitted by these rules.
- (c) The customer has engaged in unauthorized use of utility service.

²⁶ See Tr 53-58; also see R 460.129, which is likely what Mr. Memcevic was referring to.

(d) The customer has failed to comply with the terms and conditions of a settlement agreement.

(e) The customer has refused to arrange access at reasonable times for the purpose of inspection, meter reading, maintenance, or replacement of equipment that is installed upon the premises, or for the removal of a meter.

(f) The customer misrepresented his or her identity for the purpose of obtaining utility service or put service in another person's name without permission of the other person.

(g) The customer has violated any rules of the utility approved by the commission so as to adversely affect the safety of the customer or other persons or the integrity of the utility system.

(h) A person living in the customer's residence is both of the following:

(i) Has a delinquent account for service with the utility within the past 3 years that remains unpaid and is not in dispute.

(ii) The customer lived in the person's residence when all or part of the debt was incurred. The utility may transfer a prorated amount of the debt to the customer's account, based upon the length of time that the customer resided at the person's residence. This provision does not apply if the customer was a minor while living in the person's residence.

As discussed above, Mr. Dungy's complaint states a concern that DTE was requiring him to pay his father's outstanding bill in its entirety and would not consider entering into a payment plan.²⁷ Even if DTE had told Mr. Dungy this initially,²⁸ DTE clearly articulated a different position following Mr. Dungy's complaint to the MPSC on July 8, 2016. While Mr. Dungy's complaint states that Mr. Memcevic also told Mr. Dungy that he would have to pay his father's bill in its

²⁷ See R 460.155 regarding settlement agreements.

²⁸ DTE's records indicate that Mr. Dungy was advised on June 20, 2016 only that he would have to pay for service following his father's death, as shown in Exhibit R-1, page 34.

entirety,²⁹ Mr. Dungy's recollection is not consistent with the actions DTE took following Mr. Memcevic's July 19, 2016 conversation with Mr. Dungy. These actions included turning on Mr. Dungy's electric service, billing him only for service provided since his father's death, and revising his father's outstanding bill to eliminate charges for service after the date of his death.³⁰ Mr. Dungy has not provided a reason why DTE should be precluded from revising his father's bill to reflect the termination of service on the date of his death. On this basis, this PFD finds that DTE did not require Mr. Dungy to pay his father's bill.

Mr. Dungy also disputes DTE's revised billing, contending that he did not agree to pay for service even following his father's death, although he acknowledges he was living in the house. Mr. Dungy relies on the fact that DTE initially issued bills to his father for this time period, and does not directly address DTE's response that it did not know of Mr. James W. Dungy's death. Mr. Dungy also recollects that he told Mr. Memcevic that he did not agree to have service turned on and put in his name effective November 29, 2015. This recollection is inconsistent with Mr. Memcevic's recollection of the conversation,³¹ inconsistent with Mr. Memcevic's memorandum of the conversation,³² and inconsistent with some of Mr. Dungy's other statements. Mr. Dungy's stated objection to paying his father's bill had been that he was not living there while his father was alive. His

²⁹ See Exhibit C-1, page 3.

³⁰ An argument could be made that the starting date should be November 30, 2015 rather than November 29, 2015, but that distinction is trivial and not the basis for Mr. Dungy's complaint.

³¹ See Tr 50, 51-52, 54

³² See Exhibit R-1, page 43.

complaint states that he told Mr. Memcevic that he should not have to pay his father's bill because he was not living in the house:

I was told that [Mr. Memcevic] never investigated my complaint, and that I would have to pay off my father's existing bill, even though I informed Mr. [Memcevic] that I was not living in the residence, and that I was caring for my elderly parents.³³

Also, Mr. Dungy's testimony on cross-examination seemed to acknowledge that what he was asking for was what DTE provided:

Q: But now you requested service be placed in your name here however, correct?

A: Yes, after my father's passing, yes.³⁴

Thus, Mr. Memcevic's assertion that Mr. Dungy agreed to have service put in his name effective November 29, 2015, is consistent with Mr. Dungy's own statements regarding what he wanted and what he objected to. Moreover, it would be reasonable under the circumstances for Mr. Dungy to agree to this arrangement. After his father's death, Mr. Dungy was living in the house, receiving utility bills in his father's name, and clearly aware that he was using utility service.

Based on the evidentiary record, this PFD finds that Mr. Dungy did agree on July 19, 2016, to have service put in his name effective from the date of his father's death, November 29, 2015. And this PFD accepts Mr. Memcevic's testimony, supported by DTE's records, asserting that he told Mr. Dungy that once the bill was issued, he would help to work out payment arrangements.³⁵ Based on these findings, this PFD finds that DTE did not violate Rule 20 by seeking to hold

³³ See Exhibit C-1, page 3.

³⁴ See Tr 15.

³⁵ See Exhibit R-1, page 43.

Mr. Dungy responsible for outstanding charges due on the account of another. While Mr. Dungy also cites Rule 37, this PFD recognizes that Rule 37 is not applicable to the present circumstances, because Mr. Dungy is not contesting a shut off.

Second, Mr. Dungy's complaint also took issue with DTE's assessment of a deposit based on his prior payment history with the utility. Mr. Dungy did not dispute DTE's records indicating that he had a prior unpaid balance of \$1957.36, as of February 16, 2006, from a prior address.³⁶ Mr. Memcevic testified that DTE assessed the deposit because of this prior delinquent bill.³⁷ DTE argued that Commission rules permit a deposit to be assessed due to an outstanding prior bill. Rule 10, R 460.110, for prior customers, states:

(1) A utility may require a deposit as a condition of providing or restoring service to a previous customer or continuing service to a current customer if any of the following provisions apply:

(a) At the time of the request for service, the customer or applicant has a prior service account that is delinquent, that accrued within the last 6 years, and that remains unpaid and is not in dispute or if litigation was required to obtain full payment of a utility account that was not in dispute.

(b) The customer or applicant misrepresents his or her identity or credit standing.

(c) The customer or applicant fails to provide positive identification information upon request at the time of applying for service.

(d) The customer or applicant engaged in unauthorized use of utility service within the last 6 years, if the finding of unauthorized use of utility service was made after notice and an opportunity for a hearing under these rules and is not in dispute.

³⁶ See Exhibit R-1, page 43.

³⁷ See Tr 39.

(e) The utility has shut off service to the customer for nonpayment of a delinquent account that is not in dispute.

(f) The utility has had 1 or more checks issued from the customer's account returned from a financial institution for insufficient funds or no account or has had 1 or more payments from the customer's debit or credit card or other form of payment denied within the last 12 months, excluding financial institution error.

(g) The applicant has sought relief under federal bankruptcy laws within the last 6 years.

(h) Within the past 3 years, the applicant lived in a residence with a person who accrued a delinquent account for electric or gas service to the shared residence, during the time the applicant lived there, which remains unpaid and is not in dispute, and the person with the delinquent account now resides with the applicant. The utility shall advise the applicant of the process by which the applicant can refute this claim.

(2) Notwithstanding any of the provisions of subrule (1) of this rule, a utility shall not require a deposit as a condition of providing service to a previous customer or continuing service to a current customer if one of the following provisions applies:

(a) The department of human services or its successor agency is responsible for making payments to a utility on behalf of the applicant.

(b) The customer or applicant secures a guarantor who is a customer in good standing with the utility.

(c) The applicant is 65 years of age or older and has a satisfactory payment history with any gas or electric provider for the past 3 years.

DTE also cited Rule 9, R 460.109, for new customers, which similarly provides:

(1) A utility may require a deposit as a condition of providing service to a new customer if any of the following provisions apply:

(a) At the time of the request for service, the applicant has a delinquent bill with any electric or gas provider that accrued within the last 6 years and that remains unpaid and is not in dispute.

(b) The applicant misrepresents his or her identity or credit standing.

(c) The applicant fails to provide positive identification information upon request at the time of applying for new service.

(d) The applicant requests service for a location at which he or she does not reside.

(e) The applicant engaged in unauthorized use of utility service within the last 6 years, provided that the finding of unauthorized use of utility service was made after notice and an opportunity for a hearing and is not in dispute.

(f) Within the past 3 years, the applicant lived in a residence with a person who accrued a delinquent account for electric or gas service to the shared residence, during the time the applicant lived there, which remains unpaid and is not in dispute, and the person with the delinquent account now resides with the applicant. The utility shall advise the applicant of the process by which the applicant can refute this claim.

(g) The applicant has sought relief under federal bankruptcy laws within the last 6 years.

(2) Notwithstanding any of the provisions of subrule (1) of this rule, a utility shall not require a deposit as a condition of providing service to a new customer if any of the following provisions apply:

(a) The department of human services or its successor agency is responsible for making payments to a utility on behalf of the applicant.

(b) The applicant secures a guarantor who is a customer in good standing with the utility.

(c) The applicant is 65 years of age or older and has a satisfactory payment history for the past 3 years with any gas or electric provider.

Neither rule 9 or 10 authorizes a deposit for debts that are more than 6 years old.

Rule 8, R 460.108, lists the prohibited bases for assessing a deposit, including any criteria not authorized by the rules:

A utility shall not require a deposit or other guarantee as a condition of new or continued utility service based upon any of the following:

- (a) Consumer credit score, if the customer or applicant has prior utility service credit history with any electric or gas provider during the previous 6 years.
- (b) Income.
- (c) Home ownership.
- (d) Residence location.
- (e) Race.
- (f) Color.
- (g) Creed.
- (h) Sex.
- (i) Age.
- (j) National origin.
- (k) Marital status.
- (l) Familial status.
- (m) Disability.
- (n) Any other criteria not authorized by these rules.

Based on the text of the rules, it does appear that DTE erroneously assessed the deposit on the basis of the prior debt, since Mr. Dungy's prior debt to the utility accrued in 2006, 10 years before he sought service for the residence. While DTE may have an alternative basis for assessing a deposit permitted under the rules, this PFD recommends that the Commission direct DTE to identify to Staff and Mr. Dungy a permissible basis for assessing a deposit or refund the deposit to Mr. Dungy.

IV.


CONCLUSION

For the reasons explained above, this PFD recommends that the Commission make the following findings and adopt the following conclusions:

1. Find that Mr. Dungy was living in his father's house since approximately November 29, 2015.
2. Find that DTE did not bill Mr. Dungy for utility service provided to his father, but limited charges to service provided after November 29, 2015, the date of Mr. Dungy's father's death.
3. Find that Mr. Dungy agreed to pay for utility service provided to the residence since November 29, 2015.
4. Find that DTE did offer to enter into a payment plan with Mr. Dungy, and did not expect him to pay the entire amount of the initial bill immediately.
5. Conclude that DTE did not violate R 460.120 or R 460.137.
6. Conclude that DTE did not identify authority within the Commission rules for assessing a \$199 deposit to Mr. Dungy, because the provisions DTE relied on pertaining to prior debts do not apply to debts more than 6 years old.

Based on these findings and conclusions, this PFD recommends that the Commission dismiss the portion of Mr. Dungy's complaint alleging violations of R460.120 and R 460.137. In addition, this PFD recommends that the Commission direct DTE to identify its authority for assessing a deposit other than Rule 9(1)(a) or Rule 10(1)(a), or refund the deposit to Mr. Dungy.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

A handwritten signature in cursive script, appearing to read "Sharon L. Feldman", is written over a horizontal line.

Sharon L. Feldman
Administrative Law Judge

February 8, 2017
Lansing, Michigan